IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.156/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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Mr. J.J. Chandurkar, Adv. for the appellant.
Mr. N.S. Badhe, Adv. for respondent nos.1 and 2.
None for the respondent no.3.

CORAM : A.P. Lavande, J.
Dated : October 7, 2006

P.C.

Heard learned counsel for the parties.

By this second appeal, the appellant takes exception to the judgment and decree dated 3rd August 2005 passed by the 8th Adhoc Additional District Judge, Nagpur in Regular Civil Appeal No. 267/1996 allowing the appeal filed by respondent nos. 1 and 2 - defendant nos. 1 and 2 against judgment and decree dated 15.4.1996 passed by Civil Judge, Junior Division, Ramtek in Regular Civil Suit No. 158/1985.

The appellant filed the above suit

against respondent nos. 1 and 2 and respondent no. 3 seeking declaration, cancellation of sale deed and possession of the suit property. The plaintiff claimed that the suit property originally belonged to her father who was suffering from acute Leprosy and as such he was unable to manage the suit property.

According to plaintiff, respondent no.2 taking advantage of this position got the sale deed of the suit property executed on 24.10.1975 in his son's name by exerting undue influence on her father and thereafter got the suit field transferred and mutated in the name of his son. Respondent nos. 1 and 2 opposed the claim of the plaintiff by filing written statement. According to them, the sale deed was validly executed for consideration of Rs. 7000/- which was paid to the father of the appellant. They contested the claim of the plaintiff that deceased Tulshiram, the father of the appellant was unable to manage his property. Respondent no.3

supported the claim of the plaintiff. The trial Court by judgment dated 15.4.1996 decreed the suit and the lower appellate Court reversed the decree thereby dismissing the suit filed by the plaintiff-appellant. The lower appellate Court held that the execution of the sale deed has been duly proved on the basis of the evidence led by the parties. The lower appellate Court decided the issue of limitation against the plaintiff.

The learned counsel for the appellant further submitted that the lower appellate court erred in reversing the decree passed by the trial Court which was passed on proper appreciation of the evidence on record. He submitted that the finding given by the lower appellate court that the deceased Tulshriam on 24.10.1975 executed the sale deed cannot be accepted in view of clear evidence that he was not in a position to sign or affix his thumb impression in view of disease which he was suffering. He further submitted that

respondent nos. 1 and 2 had not proved the execution of the sale deed by Tulshiram and, therefore, the appeal ought to have been dismissed by the lower appellate Court. He further submitted that the lower appellate Court erred in giving the finding against plaintiff. Insofar as the limitation is concerned inasmuch as the plaintiff was minor having been born on 6.9.1964 and as such the suit filed on 31.8.1985 was within the period of limitation of three years on attaining majority. Learned counsel further submitted that the lower appellate Court erred in not relying upon the certified copy of the admission register of school (Ex.32) showing the birth of the plaintiff as 6.9.1964. In support of his submissions, learned counsel relied upon the following authorities :-

1.AIR 2005 Supreme Court 1868 (State of Punjab v. Mohinder Singh)

2.AIR 1986 Orissa 53 (Narayan Mishra and others v Champa Dibya (dead) and others.

Per contra, Mr. Badhe, learned

counsel appearing for respondent nos. 1 and 2 submitted that the lower appellate court was justified in allowing the appeal inasmuch as respondent nos. 1 and 2 had proved that Tulshiram had executed the sale deed in respect of the suit property in their favour prior to his death.

I have considered the submissions made by learned counsel appearing for the parties. The main question that arises for consideration is whether the lower appellate Court is justified in holding that the sale deed in respect of the suit property was duly executed by Tulshiram. Upon perusal of the impugned judgment, I find that this finding given by the lower appellate court cannot be faulted. The lower appellate Court has relied upon the evidence of respondent no.1 who examined himself as well as evidence of DW3 Bapulal Malviya and DW 4 Shankarlal Dhule. In my opinion, the lower appellate Court was justified in placing reliance upon the testimony of the said witnesses and holding

that respondent nos. 1 and 2 had proved the execution of sale deed thereby transferring the title of the suit property in favour of respondent no.1. That being the position, title in respect of the suit property vested in favour of respondent no.1 and, therefore, the plaintiff was not entitled to the reliefs sought for in the suit. Insofar as the issue of limitation is concerned, even if it is held that the suit was filed within the period of limitation, the same does not advance the case of the plaintiff once it is held that respondent no.1 had acquired title to the suit property. Insofar as the authority in Narayan Mishra's case (supra) relied upon by the appellant is concerned, the same also does not advance the case of the appellant any further. In the said case, the Division Bench of Orissa High Court held that in case of execution of a deed by a pardahnashin or illiterate lady, the law protects her by demanding that the burden of proof shall in such cases rest not with those who attach, but with those who rely

on it. In the present case the evidence on record clearly establishes the execution of the sale deed by deceased Tulshiram and, therefore, the ratio of said judgment is of little help to the appellant.

Upon a close scrutiny of the judgments passed by both the Courts below, I find that the lower appellate Court was justified in reversing the decree passed by the trial Court. The findings recorded by the lower appellate Court cannot be said to be perverse warranting interference in second appeal. In any event, no substantial question of law in the present appeal. Therefore, the appeal is summarily rejected.

JUDGE

A.